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Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND,
 LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR
 Chapter 11
 Jointly Administered Under
 Case No. BK-S-06-10725 LBR

**USA COMMERCIAL MORTGAGE
 COMPANY'S SECOND REPORT OF
 ACTION TAKEN AND PROGRESS
 TOWARD CONSUMMATION OF
 CONFIRMED PLAN OF
 REORGANIZATION
 (Affects USA Commercial Mortgage
 Company)**

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USA Commercial Mortgage Company (“USACM”), by and through its counsel, hereby submits this Second Report of Action Taken and Progress Toward Consummation of Confirmed Plan of Reorganization (“Second Report”).¹ This Second Report is submitted pursuant to Article VIII, Section T of the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (the “Plan”),² Paragraph 74 of the Court’s “Order Confirming the Debtors’ ‘Third Amended Joint Chapter 11 Plan of Reorganization,’ as Modified Herein” (Docket No. 2376) (the “Confirmation Order”), and the Court’s Order dated April 30, 2007 (Docket No. 3627). The confirmed Plan became effective on March 12, 2007 (the “Effective Date”). USACM filed its First Report of Action Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (“First Report”) on July 16, 2007, covering the period of March 13, 2007, through June 30, 2007. This Second Report covers the period of July 1, 2007, through September 30, 2007.³

I. Status of Claims Reserve Account

As part of the implementation of the Plan, a reserve of \$2,149,545.00 was set aside to pay allowed administrative, secured, and priority claims against USACM, which claimants are not beneficiaries of the USACM Trust. By agreement with USACM, the USACM Trust is the entity responsible for prosecuting objections to proofs of claim asserted against USACM. The Court is directed to the USACM Trust’s quarterly report filed on October 18, 2007 (Docket No. 5035), for a detailed explanation of the status of such objections. As of September 30, 2007, \$2,863.88 worth of claims had been paid leaving a reserve of \$2,146,681.12 in this account. Given the recent filings of the Pension Benefit Guaranty Corporation (the “PBGC”) related to its claims (which are discussed in greater detail at section III.1.d *infra*), USACM is reviewing the amount of the reserve and may make some adjustments to the reserve claim amount as necessary.

¹ This Final Report is filed by USACM, not the USACM Trust, a separate post-confirmation entity, and therefore, only discloses actions taken by USACM. The USACM Trust has filed a separate status report (*See* Docket No. 5035).

² Unless otherwise provided herein, all capitalized words and terms are defined in the confirmed Plan.

³ While this Second Report officially covers only the period through September 30, 2007, USACM has included some of the developments occurring after September 30, 2007, but before the filing of this Second Report that it deemed to be of particular significance.

1 **II. Status of Reserve Set for Professionals' Fees Closing of USACM Estate**

2 Also as part of the implementation of the Plan, a reserve account was created to provide for
3 the professionals' fees incurred during the closing of the USACM estate. As of September 30,
4 2007, a total of \$353,636.11 had been paid in post-Effective Date fees leaving a balance of
5 \$3,420,716.51 in this reserve account.

6 **III. Pending Motions, Adversary Proceedings, and/or Contested Matters**

7 As of the date of this Second Report, USACM has resolved most of the motions, contested
8 matters, and/or adversary proceedings that were noted in the First Report.

9 1. Matters before this Court. As of the filing of the First Report, all motions,
10 contested matters, and/or adversary proceedings before this Court involving USACM had been
11 resolved with the exception of (A) the USACM Professionals' final fee applications, (B) a
12 "conditional" adversary proceeding which was filed by Compass against, in relevant part, all of
13 the Debtors on July 7, 2007, designated as Adversary Proceeding No. 07-01105 (the "Compass
14 Proceeding"), (C) litigation brought by Compass to enforce the Confirmation Order against the so-
15 called "Lenders Protection Group" ("LPG"), in which USACM filed a limited joinder, (D) the
16 objections to the claims filed by the PBGC, and (E) the adversary proceeding filed by USACM
17 against Compass designated as Adversary Proceeding No. 07-01122 (the "USACM Proceeding").

18 a. Final Fee Applications. A hearing on the USACM Professionals' Final Fee
19 Applications was held on August 7, 2007, and all matters related to those Applications were
20 concluded at that time. The Court granted the USACM Professionals' Fee Application by
21 Orders dated August 15, 2007, (Docket Nos. 4505 and 4506) and August 16, 2007 (Docket
22 No. 4570). The Court also authorized USACM to make distributions to the USACM
23 Professionals from the Ordered Expense Reserve, which distributions have been made.
24 Therefore, there are no remaining issues with regards to the USACM Professionals' Final
25 Fee Applications.

26 b. Compass Proceeding. USACM still has not been served with the Complaint
27 in the Compass Proceeding. USACM still intends to file a motion to dismiss the Compass
28 Proceeding if, and to the extent that, such a motion is necessary to facilitate administration

of this case.

c. LPG Litigation. USACM filed a limited joinder in the motion filed by Compass to enforce the Confirmation Order against the LPG. USACM's limited joinder was based on jurisdictional grounds. In an opinion dated July 2, 2007, the Court ruled that it had jurisdiction over the motion but recommended withdrawal of the reference. The Court formally recommended that the United States District Court for the District of Nevada ("District Court") withdraw the reference on July 3, 2007 (Docket No. 4113). This proceeding is now before the District Court as Case No. 2:07-00892, and USACM is no longer involved.

d. Objections to the PBGC Claims. The PBGC filed amended claims 791, 793, and 794 against USACM on April 23 and 25, 2007. The USACM Trust filed an objection to these claims on September 11, 2007 (Docket No. 4728), and the PBGC filed a response on November 1, 2007 (Docket No. 5213). The hearing on this objection is currently scheduled for December 14, 2007. USACM has the obligation to see that these claims, to the extent that they are allowed, are paid even if USACM is dissolved under Nevada law (*see* section V, *infra*), and, therefore, it holds claimed amounts in its claim reserve account for payment.

e. USACM Proceeding. On August 7, 2007, USACM filed a complaint against Compass seeking payment of fees related to USACM's post-Effective Date services performed under the Subservicing Agreement between USACM and Compass. USACM and Compass were able to settle this dispute and the Court entered an Order on November 6, 2007, approving the parties' stipulation to dismiss the Complaint. This matter is now resolved.

2. Matters before the District Court. As of the filing of the First Report, USACM was also involved in two proceedings before the District Court. These proceedings were (A) the appeal of the Confirmation Order filed by Debt Acquisition Company of America V, LLC ("DACA"), and (B) the appeal of the Confirmation Order filed by the LPG and the so-called Jones Vargas Direct Lenders.

a. DACA Appeal. DACA filed an appeal from the Confirmation Order, which was ultimately designated as District Court No. 07-00160 (the “DACA Appeal”). USACM filed two motions to dismiss this appeal and fully briefed the appeal. On August 29, 2007, the District Court issued its opinion granting the Debtors’ motions to dismiss the DACA Appeal and affirming the Confirmation Order on the merits. On September 27, 2007, DACA filed its notice of appeal to the Ninth Circuit. This appeal is currently pending before the Ninth Circuit as Case No. 07-16796. Consistent with its obligations under the Plan and Nevada dissolution statutes (*see* section VI *infra*), USACM will continue its efforts to oppose all actions by DACA to overturn the Confirmation Order.

b. LPG/Jones Vargas Appeal. The LPG and the Jones Vargas Direct Lenders also filed an appeal from the Confirmation Order, which was ultimately designated as District Court No. 07-00072 (the “LPG/Jones Vargas Appeal”). As with the DACA Appeal, USACM filed two motions to dismiss the appeal and fully briefed the appeal. On August 29, 2007, the District Court issued its opinion granting the Debtors’ motions to dismiss the LPG/Jones Vargas Appeal and affirming the Confirmation Order on the merits. Neither the LPG nor the Jones Vargas Direct Lenders appealed this decision.

3. Administrative Proceeding. On May 2, 2007, the Nevada Mortgage Lending Division (“NMLD”) revoked USACM’s mortgage broker license based on alleged violations of Nevada law. As these alleged violations possibly expose USACM to civil liability, USACM filed an appeal of the NMLD’s determination. This matter is ongoing and USACM plans to take all appropriate action in order to resolve it including, potentially, action in the Bankruptcy Court.

IV. Status of Purchase Price Adjustment Escrow Account

As part of the sale of certain of USACM’s assets to Compass, escrow accounts were established to facilitate a later determination regarding purchase price adjustments alleged by Compass. A determination on the extent of these adjustments has not been made and this dispute continues. The USACM Trust recently indicated its willingness to pursue this issue and USACM

1 has agreed to this proposal. Thus, the USACM Trust will now be responsible for the resolution of
2 these issues.

3 **V. Status of Pre-Paid Principal Reserve**

4 USACM continues to hold approximately \$5,000,000 related to disputes between DTDF
5 and the USACM Trust over pre-paid principal and interest. DTDF and the USACM Trust have
6 made some efforts to resolve these disputes, but have been unable to reach an agreement.

7 **VI. Dissolution of USACM**

8 USACM is preparing to file dissolution papers with the Nevada Secretary of State. Under
9 Nevada law, the formal dissolution of USACM does not mean that USACM ceases to exist and all
10 its operations end. Rather, the entity:

11 continues as a body corporate for the purpose of prosecuting and defending suits, actions,
12 proceedings and claims of any kind or character by or against it, and of enabling it gradually
13 to settle and close its business, to collect and discharge its obligations, to dispose of and
14 convey its property, and to distribute its assets, but not for the purpose of continuing the
business for which it was established.

15 Nev. Rev. Stat. Ann. § 78.585 (2007). Furthermore, upon dissolution, Thomas Allison, as the
16 court-appointed officer of USACM, will become a trustee of the entity “with full power to settle
17 [USACM’s] affairs.” Nev. Rev. Stat. Ann. § 78.590 (2007); *see also* § 78.622(1) (any action
18 required to be taken by director may also be taken by court appointed officer if corporation is

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1 under federal bankruptcy reorganization). Consequently, even though USACM will shortly file
2 dissolution papers, it will continue as a corporate entity in order to wind-up its affairs and fully
3 implement the Plan – including the payment of claims and the resolution of the DACA appeal –
4 which actions will be overseen by Mr. Allison as its trustee.

5 Respectfully submitted this 8th day of November, 2007.

6
7 /s/ Lenard E. Schwartzter, Esq.

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